

### **Remarks**

Accompanying this response is a Request for Continued Examination (RCE) which requests entry of the previous response dated July 22, 2005. In addition to the explanations provided in that response, Applicant provides the following additional remarks.

Further to the explanation provided in the pending Response, Applicant also points out that to adapt Macaluso from a stowable airline tray table to act as a “patient table” would defeat the essential purpose of Macaluso. Macaluso states that his invention is intended to be used as “a stowable seat back tray table for pivotal support on a pair of arms pivotally attached to a seat back.” Abstract. By contrast, the present application explains that a patient table must meet at least two criteria: (1) be adapted to support a patient “in a prone or reclining position” (Para. 0002), and also (2) be adapted to “allow access for the beam from beneath.” (Para 0003). Any attempt to adapt Macaluso to meet those two criteria would defeat the fundamental purpose of Macaluso. That is, adapting Macaluso to support a patient in a prone position and allow access to a therapeutic beam from beneath would render Macaluso unsatisfactory for its intended purpose – the table would simply no longer be usable as a stowable seat back tray table since it would be too large and bulky to be stowed on the back of a seat in front, and by virtue of allowing a therapeutic beam access from beneath, would no longer allow for a passenger to be seated under the tray table with his meal on top. It is well established law that if a modification to a prior art renders the prior art unsatisfactory for its intended purpose the modification cannot be suggested. MPEP §2143.01 (“THE PROPOSED MODIFICATION CANNOT RENDER THE PRIOR ART UNSATISFACTORY FOR ITS INTENDED PURPOSE”) (capitals in original). The basis for this principle is the decision of the Federal Circuit in *In re Gordon*, 221 USPQ 1125 (Fed. Cir. 1984).

Furthermore, the MPEP goes on to state that “THE PROPOSED MODIFICATION CANNOT CHANGE THE PRINCIPLE OF OPERATION OF A REFERENCE.” *Id.* As discussed above, adapting Macaluso to satisfy the required criteria of a patient table would change the principle of operation of a stowable seat back tray table which in operation rests

above the lap of a user supporting their meal. A Macaluso patient table would not be a stowable seat back tray table at all. It goes without saying that the principle of operation of a patient table is vastly different than that of a stowable seat back tray table.

In addition, claim 1 requires that a patient table end section be “removably attachable to the main section.” The Examiner has asserted that the end section 20 of Macaluso is removably attachable to the main section 10. While the Examiner is obliged to read claims broadly as their language permits, he cannot read them more broadly than they permit. Claim 1 requires that the end section is removable. Macaluso’s end section is not removable, but merely can be disengaged – it cannot be removed, taken off, or taken away. Instead, Macaluso tray table is described as having lock tabs or dogs **48** and **50** which “lock or stop the tray in its outermost position to prevent it from slipping off the support arms.” *Col. 3, lines 22-23*. In fact, it is obvious that a seat back tray table such Macaluso cannot be allowed to have the end section be removable from the main part of the table structure since to do so would risk depositing the passenger’s meal on their lap.


### **Conclusion**

Applicant believes that no further extension of time is required; however, this conditional petition is being made to provide for the possibility that the applicants have inadvertently overlooked the need for a further additional extension of time. If any additional fees are required for the timely consideration of the application, please charge deposit account number 19-4972.

In view of the foregoing amendments and remarks, Applicants believe this application is now in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is invited to call applicants’ attorney at the telephone number listed below.

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Respectfully submitted,

  
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